**FARAD CONTINUATION SHEET NO.**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5659 OF 2005

| Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders. | Court's or Judge's Orders |
|---|---|

Mr. G.S. Godbole with Mr. R.D. Barve for the petitioners.

None for the respondent.

**CORAM: SMT. RANJANA DESAI, J.**

**DATED: 29TH AUGUST, 2005.**

**P.C.**:-

The petitioners are the original defendants. By the impugned order, leave to defend the suit is granted to the petitioners on condition that they should deposit an amount of Rs.2,00,000/- in the court on or before 31/8/2005. The said order is challenged in this writ petition.

I have heard Mr. Godbole, the learned counsel appearing for the petitioners. He contended that on similar set of facts, Special Summary

Suit No.83 of 2004 was filed by the plaintiff. In that suit, the petitioners were granted leave to defend the suit unconditionally. He submitted that this was pointed out to the trial court. However, the trial court did not deal with this submission. The trial court proceeded to examine the merits of the present suit being Special Summary Suit No.195 of 2004 and passed the impugned order. The trial court has, therefore, committed an illegality and, therefore, the impugned order deserves to be set aside.

I am not inclined to accept the submission of Mr. Godbole. The defendants have admitted their signatures on the Promissory Note dated 18/3/2003. The case of the defendants is that the plaintiff has obtained their signatures by practicing fraud and by misrepresentation. In my opinion, the trial court is right in coming to the prima facie conclusion that since the defendants have admitted their

signatures appearing on the Promissory Note dated 18/3/2003, there is presumption of consideration under section 118 (a) of the Negotiable Instruments Act. Besides the case of the defendants is that the plaintiff was serving in Bank of Maharashtra, Lonawala Branch and, therefore, he obtained the signatures of the defendants on the Promissory Notes on the assurance that he would get the loan sanctioned in favour of the defendants from Bank of Maharashtra. The plaintiff contended that he was never attached to Bank of Maharashtra, Lonawala Branch and never assured the defendants that he would get the loan sanctioned. Considering the nature of defence, the trial court has rightly granted conditional leave to defend.

There is also no substance in the submission that because in another suit involving similar facts, some other judge has granted unconditional leave to the defendants, in this case also same order should have been passed. Each case has to be dealt with on its merits and after

considering its peculiar facts. The defendants cannot claim parity in these matters.

Hence, the order granting leave on deposit of Rs.2,00,000/- cannot be faulted. No interference is necessary. Petition is rejected.

At the request of Mr. Godbole, time to deposit the amount of Rs.2,00,000/- is extended by six weeks. The petitioners shall communicate this order to the respondent.

(SMT. RANJANA DESAI, J.)